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NO. _____

In the Supreme Court of the United States

October Term 1998

MITCHELL ACRI, Petitioner
v.
R. PETE VANDERVEEN,
KEITH PARROTT,
RICHARD OHVALL,
as individuals
OREGON STATE UNIVERSITY,
STATE OF OREGON, Respondents

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MITCHELL ACRI
P.O. Box 61131
Las Vegas, Nevada 89160
(702) 452-7447
For Plaintiff: In Pro Per

January 31st, 1999

8118

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

QUESTIONS PRESENTED

I. Can a State voluntarily waive its Eleventh Amendment Immunity by a general appearance and conduct inconsistent with an assertion of Eleventh Amendment Immunity ?

II. Is the federal doctrine of "Qualified Immunity" predicated upon Eleventh Amendment Immunity ?

III. Does a property interest exist in a tuition fee based college education contract ?

IV. Does a liberty interest exist in a tuition fee based college education program ?

V. Do additional property and

liberty interests exist pursuant to an Interstate Compact contract between a College student and State of Nevada, the State of Oregon and Oregon State University wherein the State of Nevada paid part of the student's tuition to attend Oregon State University for the express purpose of obtaining a degree in pharmacy for which the student would be able to obtain licensure as a Registered Pharmacist in the State of Nevada and repay the loan by practicing pharmacy in Nevada for a period equivalent to the loan period ?

VII. Does the contract constitute "property" if it contains suretyship

in the form of a promissory note ?

VIII. Can a religious objection to participating in academic coursework which involves psychiatric procedures hold for the purposes of religious accommodation in education under color of state law?

IX. Does an excessive burden exist when two religious restrictions are claimed by a student and when an attempt is made to accommodate only one of them, does an equal duty exist to accommodate the second as well ?

X. Does the State of Oregon possess an Eleventh Amendment Immunity to actions upon a contract in the federal

courts which even the United States does not enjoy ?

XI. Can the conduct of state officers, independent of statute or judicial judgment constitute impairment of the obligation of contract under Article One USC Amendment Ten ?

XII. In the event a State waives its Eleventh Amendment immunity by virtue of its general appearance and conduct does a state's statutory limitation of actions for tort monetary damages pursuant to a statutory limited waiver of sovereign immunity apply under the *ERIE* doctrine ?

XIII. Can the federal court impair a plaintiff's ability to obtain public records pursuant to ORS 192 et seq. which are otherwise freely available to the general public ?

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REASONS FOR GRANTING THE WRIT:

I.) It is an inconsistent assertion of Eleventh Amendment Immunity when the State of Oregon files a counterclaim, stipulates to facts in jurisdiction, stipulates to subject matter jurisdiction, admits jurisdiction, requests a decision from the federal court and demands a federal jury, See APPENDIX.

II.) The federal doctrine of "Qualified Immunity" is reserved for state officers under the pretext that any monetary damages brought against them in their official capacity is in

effect a monetary judgment against the state treasury.....

III.) That when a student presents a religious objection to participating in coursework which involves psychiatric procedures, Oregon State University and its officers are expected to make an attempt to accommodate the same.....

IV.) A property and liberty interest exists in the context of an express relational contractual relationship which creates additional rights and duties generally governed by the Due Process Clause.....

V.) The State of Oregon is not immune to an action upon a contract under federal common law for violations of both express and implied covenants....

VI.) Both property and liberty interests exist in a tuition fee based college level education.....

VII.) A liberty interest exists in an tuition fee based college education free from religious interference.....

VIII.) That a de minimus attempt at religious accommodation in education is insufficient when the standard means of accommodation which exist in the University regulations are ignored
.....

IX.) That the federal court may not impair a party's ability to obtain public records otherwise freely available to the general public.....

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IN THE SUPREME COURT OF THE UNITED STATES

MITCHELL ACRI, Petitioner
v.
VANDERVEEN, et al, Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM A FINAL JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
Appeal No. 97-35776

PRAYER and JURISDICTION

The petitioner, MITCHELL ACRI, respectfully prays that a writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in the above proceeding on November 3rd, 1998.

Certiorari would be granted in cases involving conflicts between U.S. Circuit Courts of Appeal pursuant to Rule 17, Bingler v. Johnson, 394 U.S. 741. When special and important reasons within Rule 17 occur relating to problems and subject matter beyond the academic or episodic, certiorari is favored, especially when such issues reach constitutional dimensions, Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70. Certiorari has been granted when a case presented novel constitutional issues, Kossick v. United Fruit Co., 365 U.S. 731.

OPINIONS BELOW

The opinion(s) of the United States Court of Appeals for the Ninth Circuit (hereinafter Ninth Circuit) on November 3rd, 1998, affirmed the judgment of the U.S. District Court for the District of Oregon (hereinafter DC) and this judgment was memorandized and appears attached hereto, See APPENDIX.

The Ninth Circuit decided that the State of Oregon enjoyed Eleventh Amendment Immunity in this instant case pursuant to Pennhurst State School and Hospital v. Halderman, 465 U.S. 89 and the individual

defendant/respondents named in both their individual and official were granted qualified immunity in both their official and individual capacities pursuant to Harlow v. Fitzgerald, 457 U.S. 800.

Additionally the Ninth Circuit held that pursuant to a three-pronged test found at Portman v. County of Santa Clara, 995 F.2d 898, that petitioner had not demonstrated the first requirement of the test for establishing a denial of due process by showing a liberty or property interest protected by the Constitution.

The Ninth Circuit also denied petitioner's First Amendment Claim of Violation of a right to freedom of religion. Citing Malley v. Briggs, 475 U.S. 335, the Ninth Circuit ruled that the defendants enjoyed qualified immunity herein as it cannot be said that the officials were "plainly incompetent", because "Acri did not have a clearly established right requiring defendants to go beyond reasonable accommodation".

REASONS FOR GRANTING THE WRIT

I.) IT IS AN INCONSISTENT ASSERTION OF ELEVENTH AMENDMENT IMMUNITY WHEN THE STATE OF OREGON FILES A COUNTERCLAIM, STIPULATES TO FACTS IN JURISDICTION, STIPULATES TO SUBJECT MATTER

JURISDICTION, REQUESTS A
DECISION FROM THE FEDERAL COURT AND
DEMANDS A FEDERAL JURY.

This decision is remarkable and represents a favored subject matter for this court to review in that the decision of the Ninth Circuit in this instant case conflicts with the decision of the United States Court of Appeals for the Tenth Circuit on a constitutional question never before visited by this court. In this instant case the respondents (a) answered the complaint, (b) filed a counterclaim (c) stipulated to facts in jurisdiction (d) admitted jurisdiction (e) requested a decision by the

federal court (f) stipulated to subject matter jurisdiction (g) made a federal jury demand and (h) the Attorney General of Oregon is empowered to commence an action in federal court. When the State of Oklahoma (a) answered a complaint filed (b) asserted a counterclaim (c) entered into stipulation of fact (d) submitted the case for decision by the federal court the Tenth Circuit found that the general appearance and conduct of the state is inconsistent with an assertion of Eleventh Amendment Immunity, Aldens v. Ryan, 571 F.2d 1159.by an out-of-state

Illinois corporation without In this instant case the Ninth Circuit disagreed without comment and held that Eleventh Amendment Immunity insulated respondents from suit pursuant to Pennhurst State School and Hospital v. Halderman, 465 U.S. 89.

Although the Ninth Circuit is not bound by decisions of another circuit, it should adhere to a "policy that sister court's reasoned decision deserves great weight and precedential value, and such court, as an appellate court, strives to maintain uniformity in law among circuits, whenever

reasoned analysis will allow, thus avoiding unnecessary burdens on the U.S. Supreme Court docket", as quoted in Aldens v. Miller, 610 F.2d 538. in this instant case the Ninth Circuit completely ignored petitioner's argument of waiver by general appearance and conduct.

II.) THE FEDERAL DOCTRINE OF "QUALIFIED IMMUNITY IS RESERVED FOR STATE OFFICIALS UNDER THE PRETEXT THAT ANY MONETARY JUDGMENT BROUGHT AGAINST THEM IN THEIR OFFICIAL CAPACITY IS IN EFFECT A MONETARY JUDGMENT AGAINST THE STATE TREASURY.

The complaint in this instant case clearly names KEITH PARROTT, RICHARD OHVALL and R. PETE VANDERVEEN in their individual capacities. Qualified

immunity is predicated upon USCA 11 immunity, in Louisiana v. Jumel, 107 U.S. 711; Hagwood v. Southern, 117 U.S. 52; In re Ayres, 123 U.S. 443. A suit against a state officer acting in obedience to an amendment to the constitution of the State of Louisiana is virtually a suit against the state itself and constitutionally violative and could not be maintained. That immunity is predicated upon the state official acting in his official capacity, Kentucky v. Graham, 473 U.S. 159. Officials may be sued in their individual capacity under 42 USC 1983

and official capacity defenses may not be available to them, Hafer v. Melo, 502 U.S. 21. Punitive damages may be available against an official in his individual capacity, Graham, Id. Therefore in the event that the State of Oregon does not enjoy USCA 11 immunity herein, the state officers do not have qualified immunity in their official capacities.

III.) WHEN A STUDENT PRESENTS A RELIGIOUS OBJECTION TO PARTICIPATING IN COURSEWORK WHICH INVOLVES PSYCHIATRIC PROCEDURES, OREGON STATE UNIVERSITY AND ITS OFFICERS ARE EXPECTED TO MAKE AN ATTEMPT TO ACCOMMODATE THE SAME.

At 42 USC 300x-7 a constitutional right is expressed in the federal code

which prohibits discrimination against a student holding religious beliefs reading psychiatry in an institution receiving federal funds. The respondents acted indifferently to this plenary regulation in that it was established by uncontroverted evidence in the record that petitioner gave the respondent state officers advance notice of his long-standing religious objection to psychiatry and was subsequently placed in a psychiatric externship anyway. Upon petitioner's rejection of the same as unsuitable, respondents replied that almost all of the acceptable sites were assigned

to other students and refused to abide by University regulations regarding accommodation of students unable to complete an academic requirement for graduation. When a state agency violates its own statutorily charged regulations, a due process violation occurs, U.S. ex rel. Accardi v. Shaughnessy, 347 U.S. 260.

IV.) A PROPERTY AND LIBERTY INTEREST EXISTS IN THE CONTEXT OF AN EXPRESS RELATIONAL CONTRACTUAL RELATIONSHIP WHICH CREATES ADDITIONAL RIGHTS AND DUTIES GENERALLY GOVERNED BY THE DUE PROCESS CLAUSE.

Petitioner presented a contract containing suretyship in the form of a promissory note. The contract was entered into by petitioner, respondent

State of Oregon, respondent Oregon State University and the State of Nevada. The State of Nevada through the Western Regional Higher Education Compact paid part of petitioner's tuition for pharmacy school at Oregon State University. The contract further expressly stipulated that upon graduation, petitioner would be registered in the State of Nevada and practice pharmacy there for a time period equivalent to the loan period. Under NRS 10.045, said promissory note as stipulated is a property. In U.S. v. Winstar Corp. 116 S.Ct 2432,

> "Valid contracts are property whether the obligor be a private individual,... or state,...and its rights and duties are governed generally by the law applicable to contracts between private individuals."

While state law defines the underlying substantive interest,

> "federal constitutional law determines whether that interest rises to the level of a 'legitimate claim of entitlement' protected by the Due Process Clause", Memphis Light, Gas and Water Div. v. Craft, 436 U.S. 1.

In Perry v. Sindermann, 408 U.S. 593, this court defined "property":

> "the term 'property' denotes a broad range of interests that are secured by 'existing rules or understandings'".

The court further acknowledged in

Sindermann, Id. that the principles of contract law recognize that not every term of a contract must be reduced to writing.

Having found the existence of a property interest the analysis follows,

> "First, the private interest which will be affected by the official action, second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value if any of additional or substantive procedural safeguards, and f finally, the Government's interest including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail"

Based on this analysis, the Eighth

Circuit found that a medical student developed an implied contract in addition to the basic relationship Ezweko maintained with the University as a student there and that this implied contract created additional rights and duties governed by the Due Process clause, Ezweko v. NYC Health and Hospitals Corp., 940 F.2d 775.

The Ninth Circuit ruled that both (a) petitioner's said express contract, See APPENDIX (b) petitioner's tuition fee based contractual relationship with Oregon State University was not a property interest which rises to the level of a

constitutionally protected property or liberty interest for the purposes of the Due Process Clause.

V.) THE STATE OF OREGON IS NOT IMMUNE TO AN ACTION UPON A CONTRACT UNDER FEDERAL COMMON LAW FOR VIOLATIONS OF BOTH EXPRESS AND IMPLIED COVENANTS

> "Where property or rights are enjoyed under a grant or contract made by the state, they cannot be wantonly invaded.... While the state cannot be compelled by suit to perform its contracts, any attempt on its part to violate property or rights acquired under its contracts may be judicially resisted.", Hans v. State of Louisiana, 134 U.S. 1.

VI.) BOTH PROPERTY AND LIBERTY INTERESTS EXIST IN A TUITION FEE BASED COLLEGE LEVEL EDUCATION.

The transactions involved in the payment of tuition confer upon both

student and University express stipulations and implied covenants of good faith and fair dealing and violation of those rights may be judicially resisted, Hans, Id.

VII.) A LIBERTY INTEREST EXISTS IN A TUITION FEE BASED COLLEGE EDUCATION FREE FROM RELIGIOUS INTERFERENCE

A liberty interest has been alleged that petitioner has been damaged in his ability to learn free from religious interference. Such a precedent was found in ICR Graduate School v. Honig, 758 F.Supp 1350. A declaratory judgment supported the plaintiff's standing to sue in ICR, Id. by the showing that the plaintiff

had sustained or is in the immediate danger of sustaining some direct injury and the injury or threat of injury must be both real and proximate, not conjectural and hypothetical. This authority for supporting declaratory judgment in ICR, Id. was found at City of Los Angeles v. Lyons, 461 U.S. 95.

VIII.) THAT A DE MINIMUS ATTEMPT AT RELIGIOUS ACCOMMODATION IN EDUCATION IS INSUFFICIENT WHEN THE STANDARD MEANS OF ACCOMMODATION WHICH EXIST IN THE UNIVERSITY REGULATIONS ARE IGNORED

Petitioner notified respondents in advance on or about October 21st, 1991 and again on December 31st, 1992 of his religious objection to psychiatry,

See exhibits A and B. Respondents ignored petitioner's notice, See exhibits C and D. Respondents then placed petitioner in a psychiatric externship, claiming that petitioner requested such a placement to the exclusion of some ninety-five percent of the remaining suitable externship sites, See exhibit E. Respondents presented heresay evidence that alleged the two remaining sites of the original seventy or so, would not accept petitioner for an externship placement because of his "insulting and unprofessional" conduct. Respondents then expelled petitioner

without formal due process in spite of the University's statutorily charged regulations regarding due process. The Ninth Circuit characterized the expulsion as an academic dismissal.

Even if the respondents exhausted all of their potential externship sites on the basis of simple negligence, respondents nevertheless denied petitioner equal access to the University's statutorily charged regulations according students who are unable to meet all of the academic requirements a waiver of such requirements by either (a) examination [Section 24 Special Examination for

Waiver(a-e)] or by (b) substitution [Section 27 Substitution]. Respondents made no effort at all conform to said University regulations.

If the dismissal was academic University regulations require that the student be placed on academic suspension first. If the dismissal was not purely academic, then formal due process was appropriate. In either case the dismissal was capricious and reckless and should be subject to judicial review, Mahavongsanan v. Hall, 529 F.2d 449; Gaspar v. Bruton, 513 F.2d 850.

IX.) THAT THE FEDERAL COURT MAY NOT IMPAIR A PARTY'S ABILITY TO OBTAIN PUBLIC RECORDS OTHERWISE FREELY AVAILABLE TO THE GENERAL PUBLIC.

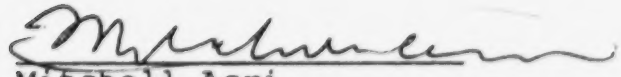
The Ninth Circuit ruled that in litigation, an inadvertent violation of local rules was sufficient to impair petitioner's right to obtain public records freely available to the general public pursuant to ORS 192 et seq. In fact petitioner did not violate the local rule requiring that parties confer prior to the filing of a motion. By making a request for production of documents which was denied by respondents, petitioner availed respondents of the impending motion to compel.

CONCLUSION

Based upon the foregoing presented material, petitioner avers that he has shown a significant property and liberty interest in his educational and the additional contract rights. Further the actions of the respondents were capricious and wanton. Serious and novel constitutional questions exist concerning USCA 11 Immunity and derivative qualified immunity doctrines. Further a careful review of the facts will show that a reasonable effort was not made to accommodate

petitioner's commonly held religious beliefs and that petitioner was denied both procedural and substantive due process in violation of statutorily charged University regulations concerning both accommodation and due process, See APPENDIX.

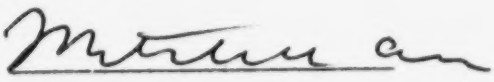
Respectfully Submitted,



Mitchell Acri
Petitioner: In Pro Per
P.O. Box 61131
Las Vegas, Nevada 89160
(702) 452-7447

RULE 29.4 (b) and (c) STATEMENT

With respect to Rule 29.4 (b) and (c) the following notice is given. In this matter, no issue relating to the constitutionality of an Act of Congress or ant statute of any state is in question herein.



Mitchell Acri
April 11, 1999

APPENDIX

ITEM #

Order and Judgment of the Ninth Circuit in this Instant Case Appeal No. 97-35776..... 1

Western Interstate Commission for Higher Education Contract and Promissory Note..... 2

Oregon State University Regulations Regarding Accommodation and Due Process..... 3

ANSWER AND JURY DEMAND..... 4

APPENDIX

Order and Judgment of the Ninth Circuit
in this Instant Case;
Appeal No. 97-35776

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR. THE NINTH CIRCUIT

MITCHELL ACRI,	) No. 97-35776
	)
Plaintiff -Appellant	) DC No.
	)CV-95-06243-TC
	)
vs.	)
	)
	)
R. PETER VANDERVEEN; RICHARD OHVALL, KEITH PARROT; OREGON STATE UNIVERSITY; DOES 1-50, STATE OF OREGON,	)
	)
Defendant -Appellees	)
	)
THRIFTY-PAYLESS INC.,	)
	)
Movant-Appellee.	)

Appeal from the United States District Court
for the District of Oregon
Thomas M. Coffin, Magistrate Judge, Presiding

Submitted September 14, I998**
Portland, Oregon

Before: **WALLACE** and **KOZINSKI**, Circuit Judges, and **EZRA**,
District Judge .***

* This disposition is not appropriate for publication

decision without oral argument. Fed. R. App. P. 34(a); Ninth Cir. R. 34-4.

- The Honorable David Alan Ezra, United States District Judge for the District of Hawaii, sitting by designation.

I. Defendants' Motion for Summary Judgment

A. Oregon State University ("OSU")

"[I]" the absence of consent a suit in which the State or one of its agencies or departments is named as the defendant is proscribed by the Eleventh Amendment." Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 100 (1984). Acri insists that although OSU is a state agency, his suit against OSU is not barred by the Eleventh Amendment because the State of Oregon has consented to suit in federal court through the adoption of the Oregon Tort Claims Act, Or. Rev. Stat. § 30.260 et seq. Although the Oregon Tort Claims Act does contain a general waiver of immunity, it does not contain an express consent to suit in federal court. See Or. Rev. Stat. § 30.265. Thus, the district court correctly concluded that OSU is immune from suit in federal court. See Ronwin V. Shapiro, 657 F.2d 1071, 1073-74 (9th Cir. 1981)

B. Individual Defendants

We agree with the district court's conclusion that these defendants are entitled to qualified immunity. "[S]tate and local officials are entitled to qualified immunity if their conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Manhattan Beach Police Officers Assoc., Inc. v. City of Manhattan Beach, 881 F.2d 816, 818 (9eh Cir. 1989) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). "The qualified immunity test requires the following three steps: (1) identification of the specific right allegedly violated; (2) determination of whether that right was so 'clearly established' as to alert a reasonable officer to its constitutional parameters; and (3) the ultimate determination of whether a reasonable officer could have believed lawful the particular conduct at issue.- Kellev v. Bore, 60 F.3d 664, 666 (9th Cir. 1995) (citation omitted).

1. Acri's First Amendment Claim for Violation of His Right to Freedom of Religion

Defendants made serious efforts to place Acri in an extemship that was consistent with his religious beliefs. Because Acri did not have a clearly established right requiring

defendants to go beyond reasonable accommodation, it cannot be said that defendants were "plainly incompetent" or knowingly violated the law. Malley v. Briggs, 475 U.S. 335, 341 (1986). This being the case, we affirm the district court's conclusion that the individual defendants are entitled to qualified immunity.

2. Acri's Procedural Due Process Claim for Violation of His Right to Freedom of Religion.

Acri additionally argues that he was denied procedural due process because university officials failed to hold a hearing prior to his dismissal from the university. To establish a procedural due process claim, a plaintiff must show "(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; (and] (3) lack of process." Portman v. County of Santa Clara, 995 F.2d 898, 904 (9th Cir. 1993). In this case, Acri has not established that the defendants deprived him of a liberty or property interest in dismissing him from the university for academic reasons. Therefore, because Acri cannot meet the first requirement for establishing a procedural due process claim, the district court properly entered judgment dismissing the claim.

3. Acri's Impairment of Contract Claim

Acri argues that the district court erred in dismissing Acri's impairment of contract claim, which is based upon a contract entered into by the State of Oregon and the State of Nevada. In support of this claim, Acri has offered a copy of the agreement he entered into with the State of Nevada regarding the repayment of his student loans. Apparently, Acri argues that as a result of his dismissal from OSU, Acri was unable to pay his student loans, thus impairing his contractual rights.

Acri's impairment of contract claim is based on the Western Regional Higher Education Compact ("Compact"). [1] Under this agreement, states that do not have professional or graduate programs in certain fields may enter into an agreement to send

their resident students to states that do have such programs. Based on the record before the court, it appears that Acri was attending OSU pursuant to the Compact. However, nothing in the Compact appears to require OSU to graduate out-of-state residents. Furthermore, Acri has not pointed to any language in the Compact which indicates that Acri has a private right of

action to enforce the Compact. Accordingly, the individual

Oregon and Nevada are both signatories to the Compact.

defendants are entitled to qualified immunity on Acri's impairment of contract claim.

For the foregoing reasons, we AFFIRM the district court's order granting defendants' motion for summary judgment. [2]

II. District Court's Denial of Acri's Motion to Compel.

We review the district court's rulings regarding discovery for abuse of discretion. Amarel v. Connell, 102 F.3d 1494, 1515 (9th Cir. 1996).

Acri contends that the district court erred in denying his motion to compel the production of the names and addresses of the preceptors who declined to accept Acri as an extern. The district court denied Acri's motion because he failed to comply with Local Rule 230-2(a) which required Acri to confer with defendants' counsel prior to filing the motion to compel. This was not an abuse of discretion. Even if we believed that the district court abused its discretion in denying Acri's motion to compel, any abuse would be harmless because, in any event, defendants are entitled to Eleventh Amendment and qualified immunity.

Therefore, we affirm the district court's denial of Acri's motion to compel.

III. District Court's Denial of Acri's Motion to Amend His Complaint

A trial court's denial of a request to amend a complaint is reviewed for abuse of discretion. Keams v. Teume Technical Inst., 110 F.3d 44, 46 (9th Cir. 1997).

The district court did not abuse its discretion in denying Acri's motion to amend his complaint. The statute of limitations had run on Acri's claims by the time he filed his motion to amend and Acri was aware of the identity of the proposed additional defendants at the time he filed his original complaint. See Louisiana-Pacific Corp. v. ASARCO. Inc., 5 F.3d 431, 434~35 (9th Cir. 1993); Kilkenny v. Arco Marine, 800 P.2d B53, 857-58 (9th Cir. 1986). Accordingly, we AFFIRM the district court's denial of Acri's motion to amend.

The court grants Acri's motion to accept an exhibit that was omitted from the excerpts of record.

[2] Acri contends that the district court erred in failing to consider his motion for partial summary judgment. However, as noted above, the defendants are entitled to Eleventh Amendment and qualified immunity. Therefore, the district court's error is harmless.

APPENDIX- Reference to Record: Western Interstate Commission for higher Education Contract. The following exhibit could not be formatted to comply with Rule 33.1. May the court refer to the Ninth Circuit record:

1.) Exhibit 'B' found at Appellant's Opening Brief; Appeal No. 97-35776

APPENDIX Reference to record: Oregon State University Student Regulations. The following exhibit could not be formatted to comply with Rule 33.1. May the court refer to the Ninth Circuit record:

2.) Oregon State University Student Handbook found at Appendix to Appellant's Opening Brief; Appeal No. 97-35776

APPENDIX

ANSWER AND JURY DEMAND (EXCERPT)

THEODORE R . KULONGOSKI
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Attorney. for: Defendant.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MITCHELL ACRI,	)
	) Civil No. 95-06243 -TC
Plaintiff,	) AFFIDAVIT OF
	) ANSWER AND JURY
	) DEMAND
V	)
R. PETE VANDERVEEN, RICHARD OHVALL, KEITH PARROTT, as individuals, the OREGON STATE UNIVERSITY, STATE OF OREGON, DOES 1-50 inclusive,	)
	)
Defendants.	)

State of Oregon acting by and through the State Board of Higher Education on behalf of Oregon State University, Peter Vanderveen, Richard Ohvall, and Keith Parrott, by way of answer

to the complaint herein, allege as follows.:

1. and 2. The answering defendants admit jurisdiction in this court and leave plaintiff to his proof with respect to all other allegations in these paragraphs.

- The answering defendants admit the allegations of paragraph 3.
- The answering defendants incorporate their responses to paragraphs 1-18 of the complaint herein.

20-24.The answering defendants deny the allegations of paragraphs 20-24.

25. The answering defendants incorporate their responses to 1-24

of the complaint here.

26-27. The answering defendants deny the allegations of paragraph 26 and 27.

28. The answering defendants incorporated 1-27 of the complaint herein.

29-32. The answering defendants deny the allegations of paragraph 29 and 32.

FOR A FIRST AFFIRMATIVE ANSWER AND DEFENSE:

Plaintiff is bared from his causes of action by the virtue of the Eleventh Amendment of the United States Constitution.

FOR A SECOND AFFIRMATIVE ANSWER AND DEFENSE.

Plaintiff has failed to commence his suit withing the time period required by applicable statutes of limitations hence is barred from recovery.

FOR A THIRD AFFIRMATIVE ANSWER AND DEFENSE:

The defendants Vanderveen, Ohvall and Parrott have at all times acted in good faith and are thereby entitled to immunity with respect to plaintiff's claims.THEODORE R . KULONGOSKI Attorney General.

7

EXHIBITS

Exhibit A- Letter of Respondent PARROTT to himself dated October 20th, 1991

Exhibit B- Affidavit of Douglas Bartz

Exhibit C- Affidavit of OHVALL

Exhibit D- Affidavit of PARROTT

Exhibit E- Affidavit of Vanderveen

EXHIBIT A

Letter of Respondent PARROTT to himself
dated October 20th, 1991

Dean Ohvall and I met with Mr. Mitch Acri on Thursday, Oct 17 from 9 AM to 9:25 AM. Our visit was generally cordial. We were all seated during the time and at no time did we approach Mr. Acri "closely".

We started our visit by indicating that we were concerned about problems he might have been having with financial aid. He said these problems had started In July or August with lost applications, and other small problems that weren't too clear to me. Some of these difficulties apparently also involved the bank but this was not clear. Mr. Acri said he filed an "administrative complaint" at the time and said that he thought maybe the current problems were in retaliation for these earlier complaints. He told us that he had met and/or spoken with Mr. McCreight prior to their meeting on Friday the 11th outside by Mitchell Playhouse. Mr. Acri said that on that Friday Mr. McCreight had approached him closely - "doing a candy breath on him" and this had bothered Mr. Acri. Later on in the discussion Mr. Acri talked about AIDS and other virus's in saliva and the possibility of spread. He also suggestioned that homosexuality might be involved although he made no direct accusations. Because of the above he expressed reluctance to work with Mr. McCreight. He commented.. you can't be too careful these days or you need to be careful..

At one point ho expressed concern that money was being diverted from student funds at the financial aid office and mentioned the possibility of "white collar crime". He said he know of other students who had not gotten all of their loan money.

I suggested to him that I was concerned about the stress this was causing him and both the Dean and I suggested that he might want to talk to someone about this. At this point he appeared to become a little agitated (not overtly but the tone of his conversation changed) and said that his civil rights would not be violated by being forced to have counseling (not a quote. I don't remember his exact words although they did include "his civil rights"). He said that people needed to be very careful suggesting counseling, etc. While the Dean and I did not state directly that we wanted him to get counseling we both had the

sense that Mr. Acri was welt aware of what we were talking about.

He later said he had studied civil rights legislation and the privacy act and cited several section numbers, etc. He said that sexual harassment had been a problem and when women had complained previously he know of one person who had undergone a ?? "pyelmosgraph" ?? test in which electrodes were placed on the genitals and? shocks applied. He said this practice was "made illegal in 1984".

The Dean and I urged him to speak to Dean Trow about his concerns regarding the financial aid office. We did not pursue the issue of "talking to someone else about this situation".

He expressed appreciation about our concern and left on a cordial note.

I continue to be very concerned about Mr. Acri's mental status. He is a very intelligent person but I believe he has some serious mental health problems. My impression is that he has been down this road before and that he has experience with counselors, etc.

Later on Thursday the 17th he met with Dr. Stennett on our faculty and spoke with him about nursing home practice. According to Dr. Stennett Mr. Acri asked specifically about "neuroleptic agents". Dr. Stennett responded that they were important but needed to be taken on a regular basis and not only as needed. Their visit was cordial and the discussion was in terms of geriatric patients and nursing home pharmacy practice, as per Dr. Stennett.

EXHIBIT B

Affidavit of Douglas Bartz: Refer to Record of the Ninth Circuit Appeal No. 97-35776 for the Original Copy referred to as "Affidavit of Douglas Bartz"

I. Douglas Bartz, attended a meeting supposedly concerning Mitchell's academic progress on December 31, 1393 with Mitchell Acri, the dean of the college of pharmacy, Dean Ohvall, the head advisor, Keith Parrott and an administrator from the University, John Dunn. It was my impression that the nature of the two hour meeting was not about Mitchell's academic progress although that is the reason he was given in written notice for this mandatory to attend meeting or else he would be kicked out of the school of pharmacy for not showing up at this meeting. This meeting was not the first meeting Mitch was required to attend for the supposed reason of academic progress and this meeting was not the first meeting that Mitch had been given notice of being expelled out of the school of pharmacy f or what was said to be the reason of poor academic progress.

The December 31, 33 meeting was required to be attended, not during regular fall or winter term sessions, but actually during Christmas vacation when all other students would be home with their families and was a very difficult time to be forced to attend a meeting when moat students are hundreds or thousands of miles away from Corvallis. I think that this meeting was purposefully scheduled at this time so that Mitch would be out of town and not able to attend. Mitch didn't even receive notice of this meeting and his expulsion notice unless he attended this meeting till only one week bet ore the scheduled date when if he had been out of town he would not have even gotten hi. mail and seen the expulsion notice.

What Mitchell warn told in writing this meeting would be about vas never really mentioned during the meeting. Mitch' academic progress was not discussed or questioned. Further, an examination of Mitchell' academic transcripts proves that these meetings were forced upon Mitch not to verify Mitch's academic progress but for other reasons which I later came to conclude were to try to get Mitch to say something that they could use against him later or that they could rationalize into a reason for expelling Mitch from the school of pharmacy. Mitch asked in this meeting if maybe some of the reason he was disliked so much was because he came from another part of the country, Ohio, where things were done differently. Mitch explained that where he was from was not like out here in Oregon and so he was raised to do things the way he was taught in back in Ohio.

Mitch explained during the meeting how the school backed him into a corner in needing to hire a lawyer several times to defend his right to stay in school and not be expelled for no apparent reason. Mitch also explained how he was forced to go to the police to notify them of incident in one of his classes were he may have been the victim of sexual harassment when professor Christensen rubbed his penis against Mitch's shoulder during an exams. Mitch clarified that he had first attempted to get Dean Ohvall to find out why what had happened that day in class.

I asked whether the Dean or anyone else had asked professor Christensen simply even what happened and why, neither Dean Ohvall, or. Parrott or the administrator at no time said that they had even bothered to ask professor Christensen or any of the students in the class that day for an explanation or of an account of what happened and why. This part of the meeting probably took no acre than ten minutes before it vas clear that no one had even bothered to do the most simple thing of asking a professor and students in the class what happened that day.

Because of a complete failure to do even this most simple thing, Mitch had gone to the campus police with his report of this incident. The campus police, unfortunately, also neglected to investigate this incident of possible sexual harassment and instead apparently decided to represent what they thought would be in the universities best interest and try to cover up or brush aside this incident as less than a major violation of state and federal law.

The university police chose instead to write a police report making Mitch out to look like an idiot and then on top of that mail that police report to Dean Ohvall. Zn addition and on top of that, Dan Ohvall put that police report into Mitch Acri's student file and may have included this letter and a very incriminating letter from professor Keith Parrott in what was mailed out to all of Mitch's potential externship preceptors thus making Mitch look like he was nuts.

On the case of sexual harassment, both the university Dean of the school of pharmacy and the university police failed to

investigate the incident which is a violation of both state and federal law. Secondly, much later, in the end result, all the university did was have an affirmative action person try to do what should be a police investigation. This is ridiculous when she knew nothing about law and her report did absolutely nothing in terms of questioning any possible eyewitnesses of what happened in class that day. It sounds like she never asked any of the students in the class that day and that she barely questioned professor Christensen on the matter.

This is a clear violation of failure to investigate sexual harassment laws possibly being broken which are state and federal laws. The college of pharmacy's failure to act on any of these things, even the case of federal laws prohibiting sexual harassment is why Mitch went to a lawyer and the police himself. The city and state police should have been notified because the university police did not do an investigation of the reported incident. I can not possibly comprehend why the university would later require an affirmative action person to do a legal investigation when she has neither police nor lawyer education and training. Dozens of students in the class could be witnesses of what actually happened but none of them were ever even questioned. I can not understand why this did not happen.

What the nature of the rest of the two hour meeting involved was Mitch Acri's Christian religious beliefs about abortion, euthanasia (so called "mercy killing"), contraception, homosexuality, and psychiatry. Specifically we discussed dispensing drugs such as RU-486, birth control (contraception), the morning after pill, and other forms of contraception that can cause or induce an abortion and Mitchell's religious conviction that dispensing these drugs (etc.) is immoral, unethical, against the Bible's teaching and against Mitchell's Christian religious convictions. Mitch brought a Bible to the meeting and read a few scriptures to clarify and substantiate his Christian religious convictions. This was to clarify from the Bible's perspective why he was against abortion, euthanasia (so called "mercy killing"), contraception, homosexuality and psychiatry. The Dean and the Need Advisor of the College of Pharmacy said that they would have difficulty placing Mitch in an externship because of his Christian religious convictions.

Mitch asked if he could help by locating Christian preceptors and by producing a list of Christian preceptors for their approval. They refused and would not release s list of their pre-approved preceptors so that Mitch could help match any Christian preceptors such as those who belong to the organization Pharmacists for Life. Instead they said that placing Mitch would be entirely on their own prerogative.

Because of the Dean and the Head Advisor's statements that it would be very difficult to place Mitch in an externship due to his Christian religious convictions, strong discrimination was clearly expressed by the Dean and the Bead Advisor against Mitch. To have discriminatory judgements made and placed upon you because of your Christian religious beliefs must truly, thus remove equal opportunity being provided as guaranteed by federal law end the U.S. constitution. Whether it be because of your religious belief s or your race or your national origin, it is a violation of federal and state law to discriminate against anyone for any of these reasons.

Mitch has a Catholic background and there are over one billion Catholics in the world today which im almost one quarter or 25% of the entire world's population and most of these people believe that most forms artificial birth control and contraception is against the Bible's teachings and the Christian religion. Mitch has similar beliefs. Mitch takes an even stronger biblical view against things like killing end murder whether it be as an adult or as an newly conceived baby. Mitch also takes a strong stand against the Hitler Germany induced crimes against humanity of euthanasia (so called "mercy killing") and any other forms of genocide. This includes causing the death of any person whether they be old or in pain or handicapped or mentally retarded or in any other way very wrongly and unjustly viewed as somehow less able to live life fully until they die of natural causes like everybody else. Euthanasia is also a Hitler Nazi form of discrimination..

On less evil note, we can thank God for having federal anti discrimination laws in our United States Constitution which will remain in effect as long as people like Mitch stand up for their rights and say when those rights have been violated. I ask you, for what other reason can you justify telling someone that it will be very difficult and maybe impossible to place a candidate like Mitch whose GPA is far above the average students and who has

received scholarships and who has already earned one bachelor degree from a Catholic college? All these thing. prove that Mitch is highly capable and competent not to do only average work but to excel at his chosen field of occupation and be an outstanding pharmacist. There is no other reason to have the judgement placed upon you that you will be very difficult or impossible to place in an externship except the reason of discrimination based on a strong bias against your religious beliefs or race or national origin which are protected by federal anti-discrimination laws.

The worst part of this meeting was when both Keith Parrott and John Dunn said that they thought Mitchell needed a "reality check" implying a psychiatric nature and told Mitch that they thought be should see the University counseling center or the Student Health Center and which insinuated that Mitch was mentally depraved somehow for his religious beliefs. It is my opinion that both the Dean and the Head Advisor pre-determined in their own minds that they could not or would not be able to place Mitch in an externship at this December 21, 1532 meeting before any attempts were even made to place him. This is further substantiated by the fact that two extremely damaging letters were allowed to be put in Mitch Acri's file. One from a police officer and one from professor Keith Parrott. Whether these incriminating and extremely damaging letters were also mailed out to potential externship preceptors or whether they were read to potential preceptors over the phone call by any faculty or the Dean of the college of pharmacy himself would definitely be cause for why a true effort in good faith was not made to place Mitch in an externship but in stark contrast may have even been made to prevent Mitch from graduating. This is a case of severe religious discrimination against Mitchell Acri because of his Christian religious convictions against abortion, euthanasia (so called "mercy killing"), contraception, homosexuality and psychiatry. Mitch has very high ethics and morals and can be an excellent pharmacists if given equal opportunity under the law.

EXHIBIT C

Affidavit of OHVALL

THEODORE R . KULONGOSKI
Attorney General
JAMES J. CASEY, JR. #78459
Assistant Attorney General
Department of Justice
1162 Court Street NE, Room 450
Salem, Oregon 97310-0506
Telephone: (503) 378-6313

Attorney. for: Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MITCHELL ACRI, Plaintiff, V R. PETE VANDERVEEN, RICHARD OHVALL, KEITH PARROTT, as individuals, the OREGON STATE UNIVERSITY, STATE OF OREGON, DOES 1-50 inclusive, Defendants.	) Civil No. 95-06243 -TC) AFFIDAVIT OF) RICHARD OHVALL

STATE OF OREGON)
) SS.
County of Benton)

I, Richard Ohvall, being duly sworn upon oath, depose and say as follows:

1. I am the Dean of the College of Pharmacy at Oregon State University and have been at all times relevant to

this lawsuit.

2. I am familiar with the plaintiff, who was enrolled at the College of Pharmacy from 1991 to 1993 inclusive.

3. The plaintiff has been a concern to me from the start of his matriculation, since he has made a variety of accusations against faculty and staff at the University both within and without the College of Pharmacy, which incidents were made known to me in my capacity as Dean.

4. I met with plaintiff in the fall of 1992, following his accusations that a faculty member had inappropriate physical and other contact with plaintiff of a sexual nature; I asked to meet with plaintiff again in the fall of 1992 but I was unsuccessful in obtaining such a meeting; the original purpose of that meeting was to discuss additional accusations against the same faculty member, but I then added that I wished to discuss the prospective externship placement of plaintiff, since I perceived a difficulty with that placement because of plaintiff's abrasive behaviors.

5. The American Council on Pharmaceutical Education, the body which accredits the College of Pharmacy,

requires that all graduates have field experience; the College of Pharmacy at Oregon State University meets this requirements through Pharmacy 410 A, B, and C, in which a student spends a term in the field working in various environments: Pharmacy 410 A is a clinical clerkship, within which students work with other health care practitioners in a clinical environment; Pharmacy 410 B is a community externship; and Pharmacy 410 C is a hospital externship. In all of these segments, the student works closely with adjunct faculty preceptors on a one-to-one basis.

6. It is important that the students perform professionally in their placements since they are located at the preceptor's place of business, interacting with the preceptor's clients and the public; therefore, a student's failure of professionalism could materially affect the preceptor, in which event the College likely would lose the site for future placements; sites are difficult to obtain and the preceptors are all members of the faculty of the College of Pharmacy and there must be close coordination between the College and the preceptor, as well as between the preceptor and the student.

7. I was aware that Mr. Acri might require

accommodation with respect to his externship placements because of his religious objection to prescribing birth control medications and abortifacients; because of concerns about meeting these objections and about whether plaintiff could meet the requirements of professionalism in the course of his externship, I wish to meet with plaintiff.

8. Only after advising plaintiff that unless he would meet with me by the end of 1992 that he would be dismissed as a student was a meeting finally arranged, which occurred on December 31, 1992; at the conclusion of that meeting I had no reason to believe that plaintiff's religious objections were broader than as stated above.

9. The externship placements are the responsibility of Dr. R. L. "Pete" Vanderveen, Assistant Dean of the College of Pharmacy; I was aware of his efforts to both place plaintiff in approved externship sites and to accommodate his religious objections as described above.

2.0. I was concerned about whether plaintiff could succeed in an internship placement, given his confrontational manner; for example, I received the document attached and

marked as Exhibit 82, which is a report from the Campus Office of Public Safety to the Associate Dean of a contact of a campus police officer by plaintiff, which contact was of a nature raising concerns about plaintiff's ability to function as a practicing pharmacist.

11. In late April or early May, 1993, students, including plaintiff, were advised of fall externship placements which would complete the requirements of Pharmacy 410. Soon thereafter, I became aware of plaintiff's writing to one of the preceptors to which he had been assigned in a way that was both insulting and contrary to generally accepted processes for raising concerns about externship placements.

12. The appropriate response, had plaintiff been concerned about any of his externship placements, would have been direct contact with Dr. Vanderveen; instead, plaintiff contacted his proposed preceptor directly in the extraordinary way described in Dr. Vanderveen's affidavit.

13. Through consultation with Dr. Vanderveen, I learned that no externship placement was possible, once the preceptors became aware of plaintiff's student file, which

included the material to Mr. Renderson; accordingly, I forwarded plaintiff's situation to the Academic Requirements Committee seeking their advice, which was that plaintiff be disenrolled.

1.4. Accordingly, I sent to plaintiff the document attached hereto and marked as Exhibit 132., advising plaintiff that he was disenrolled; subsequently, as indicated by the document attached hereto and marked Exhibit 134, plaintiff appealed that decision to the Provost; the Provost denied that appeal, stating his reasons in the document attached hereto and marked as Exhibit 139.

15. Plaintiff is not eligible for a degree from the College of Pharmacy; therefore, because he has not successfully completed Pharmacy 410, which has nothing to do with a failure of effort on the part of the College to accommodate plaintiff's religious objections, it had everything to do with plaintiff's evidence of bad judgment and abrasive personal behavior.

16. At all relevant times during the course of this matter, I consulted with Caroline Kerl, Legal Advisor to the President of Oregon State University and Special Assistant Attorney General of the State of Oregon, regarding applicable

legal concepts and at all times acted in accord with what I understood as her advice.

The foregoing is true and correct.

_____
RICHARD OHVALL

SUBSCRIBED AND SWORN to before me this _____day of _____1996.

_____
Notary Public for Oregon
My commission Expires:_____

EXHIBIT D

Affidavit of PARROTT

THEODORE R . KULONGOSKI
Attorney General
JAMES J. CASEY, JR. #78459
Assistant Attorney General
Department of Justice
1162 Court Street NE, Room 450
Salem, Oregon 97310-0506
Telephone: (503) 378-6313

Attorney. for: Defendant.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MITCHELL ACRI,	)
	)Civil No. 95-06243 -TC
Plaintiff,	) AFFIDAVIT OF
	) KEITH PARROTT
V	)
R. PETE VANDERVEEN, RICHARD OHVALL, KEITH PARROTT, as individuals, the OREGON STATE UNIVERSITY, STATE OF OREGON, DOES 1-50 inclusive,	)
	)
Defendants.	)

STATE OF OREGON	)
	) SS.
County of Benton	)

I, Keith Parrott, being duly sworn upon oath, depose and say as follows:

1. I am an Associate Professor in the College of Pharmacy at Oregon State University, and the Head Advisor and

Chair of the College Academic Requirements Committee.

2. I am familiar with the plaintiff in the captioned matter and I am one of the named defendants in the captioned lawsuit.

3. I have not been involved in the Externship Placement Program and plaintiff's participation in that program, except as described below.

4. At various times during his matriculation at Oregon State University, I had contact with Mr. Acri because of my responsibility as Head Advisor and .as Chair of College Academic Requirements Committee; however, it was my involvement with the College Academic Requirements Committee that brought me into closest contact with him being disenrolled from the College of Pharmacy.

5. In the summer of 1993, July 22, 1993, the Academic Requirements Committee considered a request from Dean Richard Ohvall to consider the status of plaintiff as a student; the Committee reviewed the documents provided and recommended that plaintiff be disenrolled.

6. The basis for this recommendation, I believe, was

the inability of the college to place the student into the required Externship Program which, in turn, was based upon his lack of professional judgment and interpersonal skills as reported in the affidavits of Dean Ohvall and Dr. Vanderveen.

7. At all relevant times during the course of this matter, I consulted with Caroline Ken, Legal Advisor to the President of Oregon State University and Special Assistant Attorney General of the State of Oregon, regarding applicable legal concepts and at all times acted in accord with what I understood a. her advice.

_____
KEITH PARROTT

SUBSCRIBED AND SWORN to before me this _____day of _____1996.

_____
Notary Public for Oregon
My commission Expires:_____

EXHIBIT E

Affidavit of VANDERVEEN

THEODORE R . KULONGOSKI
Attorney General
JAMES J. CASEY, JR. #78459
Assistant Attorney General
Department of Justice
1162 Court Street NE, Room 450
Salem, Oregon 97310-0506
Telephone: (503) 378-6313

Attorney. for: Defendant.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

MITCHELL ACRI,	)
	) Civil No. 95-06243 -TC
Plaintiff,	) AFFIDAVIT OF
	) R.L. "PETE"
V	) VANDERVEEN
R. PETE VANDERVEEN, RICHARD OHVALL, KEITH PARROTT, as individuals, the OREGON STATE UNIVERSITY, STATE OF OREGON, DOES 1-50 inclusive,	)
Defendants.	)

STATE OF OREGON)
) SS.
County of Benton)

I, R. L. "Pete" Vanderveen, being duly sworn upon oath, depose and say as follows:

1. I am the Assistant Dean of the College of

1. I am the Assistant Dean of the College of Pharmacy at Oregon State University; in that capacity I am in charge of placing students in the externship program, Pharmacy 410, completion of which is a requirement for graduation from the College.

2. In the years that this program has been in place, the College has not ever waived the requirement.

3. The relationship between the Externship Preceptor and the student is close, and the Preceptor is an Adjunct Faculty member at the College of Pharmacy, so the relationship between the College and the Preceptor is close as well; the student is actively engaged in the practice of pharmacy with the Preceptor in the course of the externship.

4. I was aware that plaintiff would require accommodation with respect to religious objections he had to prescribing birth control medications and abortifacients. I felt I would be able to do that, but I did not know plaintiff had any religious objections regarding the practice of psychiatry and psychology.

5. During plaintiff's academic stay at Oregon State

University, I taught a segment of a course through which psychiatric issues relevant to the practice of pharmacy were presented; at the conclusion of this segment, plaintiff made known to me that he was interested in this subject, and I thought that this interest would mean that he would welcome a placement which included the filling of prescriptions written by psychiatrists and otherwise working as a health care practitioner along with psychiatry.

6. Attached is a document marked Exhibit 54, which is a student profile by which students provide information to me which I use in placing them in externships. In Exhibit 54 plaintiff expressed no religious concerns of any kind in his "Statement of Professional Goals", but I was otherwise aware of his objections regarding birth control medication and abortifacients; see Exhibit 55 attached.

7. After receiving the earlier documents, I received from plaintiff's attorney the document marked as Exhibit Si; I also received Exhibit 66 from Mr. Acri. It was apparent that Mr. Acri was reluctant to meet with me and I so interpreted his request that I direct written interrogatories to him through his attorney.

8. I addressed to plaintiff and his attorney the document marked Exhibit 70; in it, I asked for an opportunity to meet with plaintiff and his attorney regarding the externship placement so that I could clarify the nature of his objection.

9. I received Exhibit 71 from plaintiff, wherein plaintiff rejected the concept of a meeting and instead insisted that I send to him an "approved preceptor" and that plaintiff and his attorney expected to ask "a lot of questions (to) each of your preceptors".

10. My reply is marked as Exhibit 73 and attached hereto. In it, I responded to the prior contacts and again requested an opportunity to meet.

11. I then received a series of correspondences dated February 21, 1993, and all marked as Exhibit 74; these came from plaintiff and pertain to the issue of meeting his religious objections, and nowhere does he express objections to working with psychiatrists. Plaintiff sought waiver of the requirements OF Pharmacy 410, but his was denied as indicated in Exhibits 80 and 81 attached.

12. I am also attaching Exhibit 84, though addressed to Dean Ohvall. I have no memory of the conversations with

plaintiff to which he refers therein and I have never discussed his views on homosexuality with plaintiff.

13. By letter of April 26, 1993 (see Exhibit 85 attached), I advised plaintiff of his fall quarter externship assignments.

14. I also received the document marked Exhibit 88 from plaintiff which may have been written before he received the document marked Exhibit 85. Again, there was no mention herein of objection on a religious basis to working with psychiatrists or psychiatry.

15. Attached hereto is Exhibit 101, which is the collection of documents given to me as material sent by plaintiff to one of the Preceptors mentioned in Exhibit 85. This Preceptor, James Henderson, is accused of inhumane treatment regarding his patient, and in other ways the letter and the material attached to it is insulting and unacceptably unprofessional. With each of the externship sites mentioned in Exhibit 85, I had arranged for the Preceptor to be aware of plaintiff's religious objections regarding abortifacients and birth control medication, and each preceptor agreed to accommodate plaintiff regarding those

matters. I made no mention of any concern that plaintiff had on a religious basis or otherwise regarding the practice of psychiatry because I had no idea that plaintiff had any such objections.

16. The proper course of action for plaintiff to address concerns about his externship placements would have been for him to contact me. Since he had refused to do this before the placements occurred, I was not surprised when I learned that he did not contact me about any concerns he may have had about an externship at Fairview or with Mr. Henderson; however, I was shocked at his direct contact of Mr. Henderson and the intemperate nature of that contact. Accordingly, I directed to plaintiff Exhibit 102 attached.

17. I did make an effort to place plaintiff at both Sacred Heart Hospital in Eugene and at the Salem Memorial Hospital, but both of those sites refused to accept plaintiff; moreover, I recontacted the Veterans' Administration Hospital in Portland, which is the site identified in Exhibit 85 as the place at which plaintiff would complete Pharmacy 410 A. I learned that this site would not accept plaintiff any longer, once they had reviewed his student file. I recollect that I then contacted the only

other available clinical externship site, the Oregon Health Sciences University Hospital, and learned that they, too, had refused to accept plaintiff, once they had reviewed his student file.

18. Accordingly, I advised Dean Ohvall that because of plaintiff's demonstrated lack of professionalism and poor judgment, I would be unable to place him in any site at which psychiatry because I had no idea that plaintiff had any such objections.

16. The proper course of action for plaintiff to address concerns about his externship placements would have been for him to contact me. Since he had refused to do this before the placements occurred, I was not surprised when I learned that he did not contact me about any concerns he may have had about an externship at Fairview or with Hr. Henderson; however, I was shocked at his direct contact of Mr. Henderson and the intemperate nature of that contact. Accordingly, I directed to plaintiff Exhibit 102 attached.

17. I did make an effort to place plaintiff at both Sacred Heart Hospital in Eugene and at the Salem Memorial

Hospital, but both of those sites refused to accept plaintiff; moreover, I recontacted the Veterans' Administration Hospital in Portland, which is the site identified in Exhibit 85 as the place at which plaintiff would complete Pharmacy 410 A. I learned that this site would not accept plaintiff any longer, once they had reviewed his student file. I recollect that I then contacted the only other available clinical externship site, the Oregon Health Sciences University Hospital, and learned that they, too, had refused to accept plaintiff, once they had reviewed his student file.

18. Accordingly, I advised Dean Ohvall that because of plaintiff's demonstrated lack of professionalism and poor judgment, I would be unable to place him in any site at which plaintiff could complete the requirements of Pharmacy 410 A, and that I had exhausted all reasonable efforts to place him in any site through which the other requirements of Pharmacy 410 could be met, subject to his announced religious objections, including not only abortifacients and birth control medications, but also medications which are involved in the practice of psychiatry.

19. I am aware that because of this inability plaintiff was disenrolled.

20. At all relevant times during the course of this matter, I consulted with Caroline Kerl, Legal Advisor to the President of Oregon State University and Special Assistant Attorney General of the State of Oregon, regarding applicable legal concepts and at all times acted in accord with what I understood as her advice.

_____
R.L. "PETE" VANDERVEEN

SUBSCRIBED AND SWORN to before me this _____day of _____1996.